

ORIGINAL

Decision No. 76711

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CHALFONT COMMUNICATIONS, Complainant, )

vs. )

GENERAL TELEPHONE COMPANY, Defendant. )

Case No. 8826  
(Filed August 1, 1968;  
Amended August 27, 1968;  
Amended January 8, 1969)

Frank Chalfont, for complainant.

A. M. Hart and Donald J. Duckett, by Donald J. Duckett, for defendant.

Andrew Tokmakoff, for the Commission staff.

O P I N I O N

Complainant, (Chalfont) a radiotelephone utility (RTU, in its original complaint alleges that defendant (General), a telephone corporation, has been providing radiotelephone service in the Indio area without a tariff to cover such service. In its amendment filed August 27, 1968, complainant requested that its complaint be broadened to consider the fundamental situation which includes the original complaint plus the following matters, all of which allegedly involve injury to complainant:

- "a. In its operations at Palm Springs, defendant obtained approval of rates based upon a showing that equipment and service of one level was to be provided. Then it proceeded to furnish service and equipment of a higher level.
- b. Despite the elevation of equipment and service and the reporting of losses, General's Application No. 49835 seeks a reduction of the Palm Springs rates.

- c. Despite long, patient, reasonable requests (up to the vice-presidential level) for tariff information to which Chalfont was entitled by Commission order, even without request, General refused and delayed the furnishing of such information.
- d. Despite the fact General's people specifically informed Chalfont that interconnection contracts would not be supplemented by tariffs, General filed such tariffs which would seem to modify the contracts. Further, this tariff provision specifically named Chalfont, and only Chalfont, yet Chalfont was neither informed that such a tariff proposal was contemplated nor was Chalfont furnished with copies of the tariff sheets either when they were submitted or approved.
- e. General arbitrarily refused Chalfont space in Classified Directories, under 'Telephone Companies'. After months of patient, mild requesting and following, up to the vice-presidential level, a complaint (Case No. 8823) was filed with the Commission. Instantly the complaint was filed, General agreed to do what months of petitioning could not accomplish, even though there was no change of agreement or circumstance.
- f. General furnishes wire line facilities to its own radiotelephone operations at a negligible charge but, in providing the same facilities to Chalfont, insists on a discriminatory, high rate.
- g. In establishing its own radiotelephone rates, General takes large credits for net profits from toll calls and yet refused similar credits or any divisions of revenues to Chalfont for identical calls which the latter generates. This is a double discrimination.
- h. Complainant believes that General uses the might and weight of its gigantic structure to force the Commission's staff to submit to its will. In attempting to have its tariffs approved by the staff, Chalfont had to re-write them to identify its two-way radio equipment to such detailed length as 'Tube Type 2-way Mobile Station' and 'Tube-Transistorized 2-way Mobile Station'. It was even necessary to name manufacturers and model numbers of the one-way service equipment. Yet General, with wealth and size its only distinction, put through change after change in its mobile

- h. equipment tariffs (both before and after Chalfont's required entries) without once disclosing that the tariff was based upon tube equipment while transistorized equipment was, in fact, being furnished."

In its amendment filed January 8, 1969, complainant alleges that defendant:

- "a. In its operations at Indio (now suspended) and at Palm Springs, General set aside blocks or orderly progressions of telephone numbers which were supplied, complete with directory listings, to General's radio-telephone subscribers.
- b. General's report to the Commission on its Palm Springs' operations have shown that its radiotelephone operations in this area have been so grossly non-compensatory as to leave nothing to pay for the above referred to facilities, causing these wireline plant costs and expenses to be paid for by General's wireline subscribers.
- c. On August 12, 1968, as a result of a prior telephone request, Chalfont met with General, at General's Santa Monica headquarters, to explain its need for a block or blocks of numbers and to request quotes on such allocations and facilities.
- d. It was emphasized that Chalfont was anxious to get a commitment on this since it will influence the selection of future operating space, a matter awaiting decision for the past several months.
- e. It has not been possible to get a proposal of any kind from General."

Defendant, in essence, claims the complaint is defective, as are the amendments, in that it fails to state a cause for complaint and that so many diverse issues are raised by these defective pleadings that it is impossible for it to prepare its defense.

Defendant requested that the complaint, as amended, be dismissed.

Public hearings were held at Palm Springs on February 25 and 26, 1969, before Examiner Gillanders. Testimony was presented by complainant's president. Complainant offered 16 exhibits, 13 of

which were received into evidence. Defendant presented no testimony but did offer 3 exhibits which were received into evidence. The staff cross-examined complainant's witness. The matter was submitted on April 7, 1969, upon receipt of complainant's and defendant's briefs and the closing statement of the Commission's staff representative.

On April 14, 1969, complainant filed a "Protest Of And Petition To Strike From Defendant's Brief".

On May 9, 1969, defendant wrote this Commission stating that "Reply briefs were not authorized in Case No. 8826. Briefs were to be concurrent (TR 156). Therefore, the so-called Protest and Petition should not be considered in any way by the Commission."

On May 13, 1969, complainant wrote this Commission stating "we are in agreement with General that reply briefs were not authorized and that briefs were to be concurrent". However, we are in strenuous disagreement with their statement that "the document appears to be in the nature of a reply to defendant's brief."

As there is agreement that the matter was submitted upon receipt of concurrent briefs, complainant's petition is denied.

According to complainant, the central issue is whether or not defendant has entered into competition in a fair and legal manner or if it has acted to illegally and improperly suppress competition.

According to defendant since neither the legislature nor this Commission has set forth any laws, orders, rules or regulations concerning competition between landline telephone companies and radiotelephone utilities it cannot conceive in what manner it could be accused of violating such nonexistent laws, orders, rules, or regulations.

Complainant alleges that the following acts of defendant constitute unfair competition:

- a. Defendant, as custodian of the competition-free public message wireline network, has given expensive and exclusive rights to its own radio-telephone operations while denying them to complainant.
- b. Defendant has used moneys, taxed against its wireline rate payers, to subsidize its radio-telephone operations in competition against complainant.
- c. Defendant has used its exclusive control of the public message wireline network to harass and frustrate complainant in its competitive radio-telephone operations.
- d. Defendant has joined these various circumstances with the avoidance of its own radiotelephone tariffs, the circumvention of the Commission's General Order 96-A, and the provision of some radiotelephone service without benefit of tariffs. This has gained defendant further competitive advantage and has created a stream of improper and illegal tormenting situations that has whipsawed and engulfed complainant and kept it off balance, distracting it from its efforts to provide an economical, quality radiotelephone service as an alternate choice for the public.

Complainant requests the following:

- a. General should be ordered to divorce its radio-telephone operations from its wireline services, conducting them under isolation (by a subsidiary) to insure that they will stand alone, or
- b. It should be ordered to entirely abandon its radiotelephone operations, with the franchise going to another wireline carrier, such as Pacific Telephone and Telegraph Company.

In addition to this, complainant requests that defendant be ordered to promptly:

- a. Arrange for supplying blocks of telephone numbers to complainant with outpulsing from the fifth (or earlier) selector levels, in a manner suitable to its operations, comparable to but not necessarily identical to the way in which defendant made this available to its own radiotelephone operations. Further, that the charges for this be arranged on the same basis as used by or ordered for defendant.

- b. Arrange for individual listings of complainant's radiotelephone subscribers in defendant's alphabetic and classified directories, the same as defendant does for its own radiotelephone customers and for the same rates as used by or ordered for defendant in its radiotelephone service.

The staff position is that as General already has several affiliate companies performing various functions, formation of a relatively small new affiliate is not going to resolve complainant's problems.

The staff believes that it is important to have fair cost allocations. While complainant should not be burdened with determination of appropriate allocations, defendant can and should develop and keep up-to-date equitable methods of cost allocations of its mobile operations subject to review of the staff. The staff maintains that Joint User tariffs do not apply to Radiotelephone Utilities' mobile radio customers and that rates in defendant's Tariffs Schedule Cal.P.U.C. No. A-14 1st Revised Sheet 2 should apply to mobile customers of complainant, if they desire such a listing in the white alphabetical pages of the directory regardless if they are or are not defendant's customers. We take official notice that defendant's Schedule Cal. P.U.C. No. A-14 was replaced and cancelled by Schedule Cal. P.U.C. No. D-1 effective August 15, 1969. The staff further maintained that the present rates for radiotelephone service (as of the hearing) are clearly discriminatory.

#### Discussion

General's proclivity in managing its affairs is nowhere better illustrated than in its brief wherein its counsel characterizes its implementation of the Indio telephone service as "inadvertent". This record shows that the Indio service was served from a transmitter located in Indio. This record also shows that the service

was supplied without benefit of tariff. The record does not reveal whether or not General obtained the required permission from the Federal Communications Commission to establish the Indio service. The end result of this "inadvertent" adventure was a loss of customers by Chalfont. The record also reveals that General is now serving customers from its Indio transmitter and that the matter of Indio service is the subject of General's Application No. 50504.<sup>1/</sup>

Another example of General's proclivity is its counsel's claim (Brief page 6 that taking judicial notice of its Advice Letter No. 394 will show that it offered IMTS service in Palm Springs and charged itself for certain central office equipment. We have taken official notice of Advice Letter No. 394 and after perusing said letter have concluded it does not mention either IMTS or the charges for central office equipment.

This record shows that in Application No. 49835 General requested that its rates for mobile telephone service in Palm Springs be reduced from \$56 to \$45 and that General's witness testified that he had made no cost studies of that area to support such a reduction. Chalfont testified that General's charges should be approximately \$133 per month. The staff witness testified that interim dial flat rate service should be \$83 per month.

We take official notice of Decision No. 75873 dated July 1, 1969, in Application No. 49835 in which the Commission adopted the staff's proposed rates. From the record in this proceeding, we cannot tell whether General's request in Application No. 49835 was made because management wanted to compete with Chalfont or because

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<sup>1/</sup> By Decision No. 76235, dated September 30, 1969, the tariffs filed pursuant to Advice Letter No. 2055 were permanently suspended and the proceeding under Application No. 50504 was dismissed without prejudice.

management really believed a rate reduction was in order. It is sufficient to note that in Decision No. 75873 we adopted the staff recommended rates which should prove the contention that General's previous rates were "clearly discriminatory". The tariffs ordered filed clearly indicate the provision for IMTS.

General filed its Advice Letter No. 2241 on October 6, 1969, (effective November 6, 1969) to revise its mobile telephone service schedule to provide for the establishment of dial mobile telephone service in the Indio exchange (Riverside County). The service will be offered on a flat rate basis until the system can be modified for measured rate service in accordance with the rates and conditions specified for mobile telephone service in Decision No. 75873.

On October 20, 1969, Chalfont Communications filed a protest against General's Advice Letter No. 2241 with the request that the tariffs be rejected. The Commission took no action to suspend or reject the tariffs and they are now effective.

Complainant wants an interconnection agreement with defendant enabling complainant's customers to dial directly to initiate a paging signal without help from Chalfont's operator. This can be done by joining complainant's base station mobile operations to the 4th or 5th selector of General's central office. Complainant's position is that this would eliminate a possible disparity in the service which General can offer to its own customers and complainant cannot. Furthermore, complainant has tried to obtain such a connection and this was denied although some further discussions were not foreclosed. General's position as stated by its counsel is: "I would agree that it would be physically possible. I think the only hedge I would have there would be my impression that it would



be legally not possible under Section 766, but we can make that argument later." The staff position is that since it is difficult for complainant to present evidence on the cost of providing the interconnection desired, without having special studies made and analyzed, General should be directed to make such studies. However, this should not preclude complainant and other radiotelephone utilities from coming to an interim agreement for providing such or similar interconnection. The record in this case does not indicate that General is presently providing direct-dial paging systems in Palm Springs or Indio.

Complainant claims that General provides free directory listings to its mobile customers while complainant or its customers have to pay for each listing (if the customer is not General's customer as well), based on joint user rates. The definition of a Joint User (General's Tariffs Schedule Cal. P.U.C. No. D & R - DEFINITIONS AND RULES is: "An individual or concern authorized by the company and the customer to share in the use of a customer's business telephone service". According to the staff, Chalfont's mobile customers do not fall into this category as they are customers of one utility desiring a telephone listing in the directory of another utility.

#### Findings and Conclusions

The Commission finds that:

1. It is not in the public interest for General Telephone Company of California to form an affiliate to handle its mobile service.
2. The present charge applied by defendant for mobile service in Palm Springs and Indio is not discriminatory as to complainant.

3. The previous charge applied by General for mobile service in Palm Springs and Indio was discriminatory as to complainant.

4. It is fair and reasonable to change the language in Section D-1 of the company's tariffs as recommended in the Commission staff's statement.

5. It is proper to delay consideration of interconnection between defendant and complainant pending receipt by defendant of a bona fide request from complainant when it has a need for such interconnection.

We conclude that defendant should change the language in Section A-14 of its tariffs as herein ordered.

O R D E R

IT IS ORDERED that within twenty days after the effective date of this order, and on not less than five days' notice to the public and the Commission, General Telephone Company of California shall revise its tariff schedules by means of an Advice Letter filed in accordance with procedures set forth in General Order No. 96-A to put into effect the changes to Schedule D-1 set forth below.

General Telephone Company of California      Schedule Cal. P.U.C. No.D-1  
Original Sheet 11

SPECIAL CONDITIONS

1. ALPHABETICAL

a. After paragraph (3) in Original Sheet 11

ADD

- (4) The rate for a radiotelephone utility's bona fide mobile radio customers using the telephone number of the utility's base station shall be that of an additional listing.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Diego, California, this 3rd  
day of FEBRUARY, 1970.

William J. Lyons, Jr.  
President

J. W. Korman

[Signature]

Vernon L. Stevenson  
Commissioners

Commissioner A. W. Gotov, being necessarily absent, did not participate in the disposition of this proceeding.